IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1050 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKBHAI VIRJIBHAI CHODVADIYA - Applicant(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR LR PATHAN for Applicant(s) : 1,
Mr. MR Mengdey, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR TUSHAR MEHTA for Respondent(s) : 3,
DS AFF.NOT FILED (N) for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2007
ORAL JUDGMENT

Rule. Shri MR Mengdey, learned APP appearing on behalf of the State and Shri Tushar Mehta, learned advocate appearing on behalf of

respondent No.3 waive service of Rule. By way of this petition under Article 226/227 of the Constitution of India petitioner, original-applicant has prayed for an appropriate writ, direction or order quashing and setting aside order dated 27.6.2005 passed by learned Additional Sessions Judge, Fast Track Court No.5, Surat, and order dated 31.1.2006 passed by learned Additional Sessions Judge, Fast Track Court No.4, Surat. It is also further prayed to restore Criminal Misc. Application No. 68/2002 and direct the learned Additional Sessions Judge to decide the same on merits.

2. On the complaint of respondent No.2 proceeding under Section 145 of the Criminal Procedure Code was initiated by Additional Executive Magistrate, Surat City by registering Case No. 18/2001. By order dated 15.3.2002 the Additional Executive Magistrate disposed of the said case deciding possession in favour of respondent No.3. Being aggrieved and

dissatisfied with the same the petitioner preferred Criminal Revision Application No. 68/2002 before the learned Sessions Judge, Surat. It appears that initially the learned Additional Sessions Judge granted stay by order dated 15th March 2002. It also appears from the record that some other person also preferred Criminal Revision Application No. 85/2002 and that the aforesaid Criminal Misc. Application No. 68/2002 filed by the petitioner came to be dismissed for default by the learned Additional Sessions Judge, Surat by order dated 27.6.2005 as the learned advocate appearing for the petitioner did not remain present. The petitioner preferred application for restoration of the Criminal Revision Application No. 68/2002 however as there was a delay he preferred Criminal Delay Application No. 1970/2005. The learned Additional Sessions Judge, Surat by order dated 31.1.2006 dismissed the said application for condonation of delay by holding that no case is made out to condone the delay in preferring delay

condonation application. Being aggrieved by the aforesaid order the petitioner has preferred the present Special Criminal Application for quashing and setting aside the order passed by the learned Additional Sessions Judge dismissing the Criminal Revision Application for default as well as the order passed by the learned Additional Sessions Judge in rejecting the application for delay condonation.

3. Learned Advocates appearing on behalf of the respective parties have tried to submit the case on merits. However,as this Court proposes to remand the matter to the Revisional Court for deciding the matter for restoration on merits after condoning the delay in preferring the Restoration Application this Court is not further considering the case on merits. The parties do not press for a reasoned order as to condonation of delay. With a view to see that the petitioner is not non-suited on the technical ground of delay and that the petitioner gets an opportunity

to submit his case before the Revisional Court on merits to consider the Restoration Application, this Court is of the opinion that the delay be condoned and the Restoration Application submitted by the petitioner to restore the Criminal Revision Application No. 68/2002 shall be decided on merits. However at the same time some cost is required to be imposed upon the petitioner as for no fault of respondents they are dragged to this Court and who have to bear expenses of the present proceedings. Under the circumstances, the cost is to be paid by the petitioner to the respondent No.3 which is quantified at Rs. 5000, which the petitioner is directed to deposit before the learned Trial Court within the period of four weeks from today.

4. For the reasons stated above, the petition succeeds in part. The impugned order dated 31.1.2006 passed by the learned Additional Sessions Judge, Surat in Delay Application No. 1970 of 2005 is hereby quashed and set aside and

the delay in preferring the application for restoration of Criminal Revision Application No. 68/2002 is hereby condoned and the learned Revisional Court is directed to decide and dispose of the Revision Application in accordance with law and on its own merits, if the petitioner deposits the aforesaid amount of Rs. 5000 with the learned Revisional Court on or before 30th August 2007. If the aforesaid amount is not deposited, then the order dated 31.1.2006 passed by the learned Revisional Court in not condoning the delay shall remain in force and the Revision Application is not required to be heard on merits. On deposit of the aforesaid amount, the learned Revisional Court is directed to pay to the respondent No.3 herein by Account Payee cheque. Rule is made absolute to the aforesaid extent.

[M.R. Shah, J.]

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